

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT BECKLEY

In re MASSEY ENERGY CO. SECURITIES LITIGATION) Civil Action No. 5:10-cv-00689-ICB
)
) <u>CLASS ACTION</u>
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This Document Relates To:) The Honorable Irene C. Berger
)
ALL ACTIONS.) JOINT STIPULATION
) CONCERNING BRIEFING ON THE
) PARTIAL LIFTING OF THE PSLRA
) DISCOVERY STAY

Lead Plaintiff Commonwealth of Massachusetts Pension Reserves Investment Trust and Plaintiff David Wagner (collectively, “Plaintiffs”), Defendants Massey Energy Company (“Massey”), James B. Crawford, E. Gordon Gee, Robert H. Foglesong, Richard M. Gabrys, Lady Barbara Thomas Judge, Dan R. Moore, Stanley C. Suboleski, Don L. Blankenship, Baxter F. Phillips, Jr., Eric B. Tolbert, and J. Christopher Adkins (collectively, “Defendants”), and the United States of America (the “Government”) (together, the “Parties”), by their representative undersigned counsel, hereby respectfully move the Court for an Order permitting Plaintiffs to file an omnibus brief in support of their motion for the partial lifting of the PSLRA discovery stay (“Motion to Partially Lift Discovery Stay”) and in response to The United States of America’s Combined Motions to Intervene and to Stay Discovery and Memorandum of Law in Support (the “Government’s Combined Motion”) as well as adjusting other deadlines in connection with the Government’s Combined Motion. The Parties also respectfully request that the Court resolve both the Motion to Partially Lift Discovery Stay and the Government’s Combined Motion.

In support thereof, the Parties state as follows:

WHEREAS, on February 16, 2011, Plaintiffs filed the Motion to Partially Lift Discovery Stay [Dkt. Nos. 76-78];

WHEREAS, Defendants filed response briefs in opposition to the Motion to Partially Lift Discovery Stay on March 7, 2011 [Dkt. Nos. 80 and 81], and Plaintiffs' reply in support of Motion to Partially Lift Discovery Stay is currently due to be filed on March 17, 2011;

WHEREAS, on March 3, 2011, the Government filed the Government's Combined Motion [Dkt. No. 79], and the parties' responses to the Government's Combined Motion are currently due to be filed on March 21, 2011;

WHEREAS, the Motion to Partially Lift Discovery Stay and the Government's Combined Motion involve overlapping issues, and, therefore, the purposes of judicial economy and efficiency would be best served if Plaintiffs addressed the common issues raised in both of these motions simultaneously in one omnibus brief;

WHEREAS, Plaintiffs' omnibus brief will not exceed thirty-five (35) pages, which is less than the combined number of pages permitted by the Local Rules of Procedure for both Plaintiffs' reply in support of the Motion to Partially Lift Discovery Stay and response to the Government's Combined Motion;¹

WHEREAS, on March 10, 2011, the Court issued an Order referring the Government's Combined Motion to the Honorable R. Clarke Vandervort, United States Magistrate Judge for disposition [Dkt. No. 82] but did not similarly refer the Motion to Partially Lift Discovery Stay;

¹ Local Rule 7.1 of the Local Rules of Procedure of the United States District Court of the Southern District of West Virginia provides that any response and reply memoranda shall be no more than twenty (20) pages in length.

WHEREAS, the parties believe that due to the overlapping issues involved in the Motion to Partially Lift Discovery Stay and the Government's Combined Motion, these motions should be resolved by the same Judge;

IT IS HEREBY STIPULATED AND AGREED, by and between undersigned counsel, subject to the approval of the Court, that:

1. Plaintiffs shall file an omnibus brief of no more than thirty-five (35) pages containing their reply in support of Motion to Partially Lift Discovery Stay and response to the Government's Combined Motion on or before April 1, 2011. Defendants' response to the Government's Combined Motion shall also be due on or before April 1, 2011.
2. The Government shall file a reply on or before April 15, 2011.
3. The Court shall resolve both the Motion to Partially Lift Stay and the Government's Combined Motion.

DATED: March 16, 2011

s/JOEL H. BERNSTEIN

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ITS SO ORDERED.

DATED: _____

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**HONORABLE IRENE C. BERGER
UNITED STATES DISTRICT JUDGE**